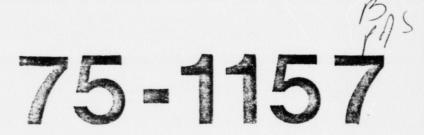
# United States Court of Appeals for the Second Circuit



**APPENDIX** 



To be argued by JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee, :

-against-

RAVELLE ROGERS,

Appellant.

Docket No. 75-1157

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ., THE LEGAL AID SOCIETY, Attorney for Appellant FEDERAL DEFENDER SERVICES UNIT 509 United States Court House Foley Square New York, New York 10007 (212) 732-2971

JONATHAN J. SILBERMANN,

Of Counsel.

PAGINATION AS IN ORIGINAL COPY

D. C. Form No. 100

# JUDGE MOTLEY 74 CRIM. 27

	TITLE OF CASE				ATTORNEYS				
THE UNITED STATES					For U. S.:				
	··· vs.				Alan R. Kaufman, AUSA				
	RAVELLE R				264-	6433			
					1.	•			
					For Defendant:				
					, ,				
			CASH RECEIVED AND DISBURSED						
(06)	STRACT OF COSTS	AMOUNT	DATE	NAMI	5	RECEIVED	DISBURSED		
Fine,									
Clerk,	2.								
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Witnesses)									
	forged U.S. Tre	os .							
check.	Torged O.O. III								
Check.									
( Or	ne Count)								
DATE				PROCEEDINGS					
-11-74	Filed indictment								
21-74	Deft.(atty. pre	sent)Cour	t direct	ts entry of n	ot guilty p	lea. Deft	. cont'o		
	released on his	own reco	gnizance	e. Case assig	ned to Judg	e Motley	for all		
	purposes.			yler,J.					
26									
1-26-74	Filed Waiver of tr	ial by Jury	· Approve	edMotley, J.	Hearing on m	otion begun	n &c		
*	concluded -Mation	deniedTR	IAL BEGUN	Atty.present.					
4-29-74	Trial cont'd. & co	nclueded. C	ourt fine	is deft GUILTY	P.S.I. ordere	d sentence	adjd to		
4-67-14	6-28-74 lla.m. De								

		-			
DATE	PROCEEDINGS		CLERK	S FEES	
DATE	PROCEEDINGS	PLAIN	TIFF	DEFEND	DANT
1-30-74	Filed Govt's Exhibit 3510A ordered sealed and impoundedMotley,	J.			
6-28-74	Deft. (Atty present) sentenced to 5 yrs. E.S.S. prob 5 yrs. Def	t. adv	ised	of his	
ri	ght to appeal, Motley, J.				
6-28-74	Filed Judgment that the deft is sentenced to Five (5) years. Executive	tion o	f s	entence	i
-	suspended. Deft. is placed on probation for a period of Five (5)	years,	sub	ject	
1-27-74	to the standing probation order of this Court. Motley, J. Filed transcript of record of proceedings, dated April 26, 19	74			
1-27-74	Filed transcript of record of proceedings, dated April 26, 27,	1974		λ	
12-26-74	RAVELLE ROGERS - Filed the following papers received from Mag.Raby docket entry sheet, Criminal Complaint, S.D.N.Y., Disposition				_
	sheet, and Appointment of Counsel.				
3-3-75 4-1-75 3-12-75	Filed probation form no 12 and Order for issuance of a bench warrant.  Filed warrant of arrest with marshals return	nt	Motl	ey,J.	
3/27/15	BfW ordered. BfW issued.				
3-28-75	Filed JudgmentProbation dated June 28,1974 is revokedIt is a deft is sentenced to a term of FIVE YEARS imprisonment at a place to be designated by the Atty.Gen'l of the United StatesMotl	of co	nfine	ment	
3-31-75	Filed notice of appeal from judgment entered on 3-28-75 copy give	n to U	.S.At	ty.	
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TREASURY PEILADELPHIA, PENNSYLVANIA Chicek No. 3 5 INUCATION PROCEDURE Venen Ching this chart for the Individual payee, you should require for identification and enderfement by your presence, as claims Taningt endorfele may otherwhe result. The payee should enderse below in ink or indelible penell. If the endorsement to made by mark (X). It must be witnessed by two persons who call write, giving their places of Posidence in full. It is suggested that this check be promptly negotiated. 154 PAY TO THE ORDER OF GA ELLEVILLE ELEVELE CO. JUN-] 1973 B.R.G. CHECK CASHING, IN : 15 ::00005: 1274 1:-3 2.7.7 DUMPER RESERVED U.S. SAMMING DEMING

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> UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 27

UNITED STATES OF AMERICA,

-v-

RAVELLE ROGERS.

Defendant.

INDICTMENT

74 Cr.

DISTRICT S. FILED

JAN 11 1974

S. D. OF N. Y

The Grand Jury charges:

On or about the 1st day of June, 1973, in the Southern District of New York, RAVELLE ROCERS, the defendant, unlawfully, wilfully and knowingly, did utter and publish as true a false, forged, altered and counterfeited writing with intent to defraud the United States, knowing the same to be false, forged, altered and counterfeited, said writing being a United States Treasury check of the following tenor:

(Title 18, United States Code, Section 495.)

FOREMAN

PAUL J. CURRAN

United States Attorney

MICDOFILM JAN 14 874



## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

RAVELLE ROGERS,

Defendant.

### INDICTMENT

74 Cr.

Title 18, United States Code, Section 495.

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Foreman.

JAN 11 1974
S. D. OF N.

Jun 2111974 - DEFT. (Atty Present) Court Direct
PLEA OF N/G. DEFT. Contd. R.O.R.

PLEA OF N/G. DEFT. Contd. R.O.R.

APR 26 1974 Henring ON MOTION Degun & Concluded

AFR 29 15 1- Trial Continued of Concluded Court

Sunds Det. gully ses charged & S. S. S.

Descor sentences safiel 6/28/74 11AM

Dept R. OR.

JUN 28 1974 Det Catherney present) sentenced to 5 yrs & s.s. probblish 5 yrs, Det advent of his right to segreal UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

74 CR. 27

:

RAVELLE ROGERS,

Defendant. :

APPEARANCES

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Attorney for Defendant

# Memorandum Opinion and Findings on Revocation of Probation

After a plea of not guilty and a finding of guilty by the court, defendant Rogers was convicted of forgery in violation of 18 U.S.C. § 495. On June 28, 1974 defendant was sentenced to five years, execution suspended, and placed on probation for five years subject to the standing probation order of this court. In February, 1975, the United States Probation Office filed a petition charging that defendant had violated his probation prior to its expiration. At the conclusion of a hearing conducted over three days, involving testimony of seven witnesses and oral argument by counsel, the court concluded that the defendant had violated the terms of his probation. By judgment dated March 28, 1975 the court revoked the probation order dated June 28, 1974 and sentenced the defendant to a term of five years imprisonment. In support of the court's order revoking probation, the court makes the following findings.

#### First Specification

In the first count in the petition defendant was charged with having failed to comply with that section of the probation order which requires that defendant not violate any law. (See, General Conditions of Probation, Section One.) At the hearing, there was convincing testimony by defendant's wite, and a policeman (William J. Brown) to the effect that in January 1975 defendant had been arrested and an order of protection issued by the Family Court after defendant had harassed and threatened to assault his wife. According to the testimony, defendant was arrested after an episode which occurred about .2:00 A.M. in which defendant was found banging on and cursing at his wife's door, and threatening to kill her. The court is satisfied that the events described above did in fact occur and that they constitute a violation of state law. Such conduct amounted to a breach of probation and this court need not await subsequent or conclusive proceedings in local courts before finding that the defendant violated probation. United States v. Markovich, 348 F.2d 238, 240 (2d Cir. 1965).

#### Second Specification

In the second count in the petition the defendant was charged with failing to work or earnestly seek employment. (See, General Conditions of Probation, Sections Three and Four.) Defendant testified at the hearing and attempted to show that, notwithstanding his good intentions, he had been fired. This testimony was countered by a more convincing account of defendant's employment history given by his former employer, Alfred A. Cavalier. According to Mr. Cavalier, the defendant asked for an advance and when he was refused, the defendant started to attack Mr. Cavalier. The defendant was eventually restrained by a coworker. Mr. Cavalier further testified that the defendant had a bad work record including but not limited to tardiness. After the incident described above, the defendant failed to return to the job.

Next, defendant, in an apparent effort to get a job, went to the State Division of Employment in Queens.

An employee of that office, Ms. Brenda Hudson, testified that the defendant made it clear that he would not accept referral from the Queens office because they were limited

to industrial positions. The defendant was directed to the Manhattan office where he could get referrals for the clerical work to which he felt better suited. There is no evidence that the defendant did in fact accept referrals from the Manhattan office.

Another witness, Mr. Fred L. Matthews, of the Bureau of Prisons testified that as part of the Bureau's rehabilitation program, his office attempted to help the defendant get a job. Mr. Matthews directed the defendant to two jobs. The defendant refused both jobs, apparently because the salary was under \$200.00 per week.

In the court's view, the pattern of defendant s conduct just described clearly demonstrates a violation of the condition that he shall seek and continue in steady employment. The record shows that the defendant failed to behave in a manner consistent with maintaining continued employment and when faced with unemployment failed to take steps by which to secure a new job.

### Third Specification

In the third count in the petition, the defendant was charged with failure to follow the probation officer's

instructions. (See, General Conditions of Probation,
Section Eight.) In particular, Mr. James Wilson, defendant's probation officer, directed the defendant to obtain
letters from those individuals from whom he had sought
employment in order to verify that such efforts had in
fact been made. Notwithstanding defendant's protestation
that he had gone to half a dozen job interviews, he failed
to provide the letters requested. He did produce one such
letter which in the court's view was not authentic, and
from the suggestions made on the record, appears to have
been written by the defendant's mother. In the court's view,
the record shows that the defendant failed to follow hiprobation officer's directions, and hence violated his probation.

As a final observation, the court notes that, in addition to satisfactory proof of violations of the three counts charged in the petition, the defendant failed to appear in court on the second day of the hearing on revocation. Although defense counsel faithfully attempted to explain away the defendant's failure to appear the court was not convinced that it was due to the claimed misunderstanding and the hearing proceeded. Indeed, the defendant showed up again

ment which the court consented to do. Nevertheless, the court concludes that the defendant's absence was wilful and a deliberate failure to follow the court's orders, which in itself would have provided a basis for revocation of probation. In sum, the court is convinced that the probationer has abused the opportunity given him to avoid incarceration. Roberson v. State of Connecticut, 501 F.2d 305, 308 (2d Cir. 1974). See, also United States v. Nagelbarg, 413 F.2d 703, 709 (2d Cir. 1969), cert. denied, 396 U. S. 1010 (1970).

- ... T.

Dated: New York, New York
June 4, 1975

CONSTANCE BAKER MOTLEY

U. S. D. J.

You said he was supposed to meet you at 1:30.

He knew I had subpoensed these two witnesses here, one of whom was his former employer and the other is a state official. It is an obvious contradiction of anything he has probably said. His failure to appear is willful. He has been late every time this has been on. I have been sitting here in the courtroom every time this case came on. He was late every time.

Now to be late again on an occasion when these people are brought here by special order of the Court is enough to convince me that he has violated his probation.

He was charged with being late to work as you know. One of the things was that he was late to work all the time. By his own admission he was late 25 times in eight months or whatever.

Did you check on any of these other places?

MR. WILSON: Your Honor, I have a memo which I prepared. I hadn it up to the Court.

MR. THAU: May I be permitted to look in the hallways?

THE COURT: Yes.

MS. STRAUSS: Your Honor, if I may be heard to add to that report. While Mr. Wilson was checking those particular agencies you had asked him to check yesterday afternoon, I attempted to verify the remaining references the

2 probationer had given.

Wilson that we no longer have a copy of, he said that it was from a company called Delight Record. I called there and was connected with someone who told me her name was Mrs.

Rogers and she told me her name was Emma Rogers. She said that Mr. Rogers had been promised a job there by a Mr.

Genarro whom he had mentioned when he was on the stand. I asked her if she was related to Mr. Rogers. She claimed she never met him. However, the probation department presentence report reflects that probationer's mother's name is Emma Rogers and she works at the record company.

I spoke to a Mr. Ed Mullin and George Kennedy. They told me that they would have in their traffic sheets a listing for Mr. Rogers had he been in the office even if he had been there previously and previously filled out an application. They checked the sheets for the 42nd Street office he referred to on the stand from November 11th through January 30th of this year when that office closed and they told me that according to their records he had not been in there. They cannot go back earlier than November 11th.

As to the NAACP I spoke to a Mr. Valentine.

He said Mr. Rogers had been in to see him. That he had taken

information from Mr. Rogers and told him it was not their

practice to give job referrals initially, he had to come back

for an orientation session. But Rogers did not come back

or reach him again. That by the way, the NAACP was Project

Rebound, a reference that Mr. Wilson had given to Mr. Rogers

7 and Mr. Valentine's records reflected that Mr. Rogers had

8 been in there on Mr. Wilson's referral.

As to the A.P. Linen Service in the Bronx, I spoke to a Mrs. Rodriguez and a Miss Alma Lubrow; they told me they were in charge of personnel. The information they gave me was that Mr. Rogers worked there from September 25, 1973, until October 3, 1973, when he quit. At that time he has helping with bookkeeping. Apparently there was a dispute as to his hours and this was the basis on which he quit. To their knowledge he had not been back since to apply for a job.

THE COURT: What date was that?

MS. STRAUSS: He was working there in October and September of 1973. He was only working there for about a week or two weeks.

As I say, to their knowledge, they are in charge of personnel, he had not been back although they did concede the possibility he could walk in the door and speak to somebody else and say, "Do you have any jobs?" In any event they knew

of no formal application.

I think that with the memorandum your Honor has in front of you that completes the list of agencies and employers that Mr. Rogers gave us yesterday.

THE COURT: We can have this marked as another Court exhibit.

(Court Exhibit 3 marked.)

MS. STRAUSS: If I may be heard a little longer: I would submit at this time that the government has proved each of the three specifications upon which Mr. Rogers was charged in this proceeding. I believe that we did make a prima facie case on each of them and that Mr. Rogers upon cross examination could be found to have not told the truth in many instances both as a matter of documentary contradiction and contradiction of the various sources that were put before your Honor today.

I would ask at this time that the Court would rule that on the basis of evidence presented the probation violation has conformed to the specifications.

MR. THAU: May I be heard?

THE COURT: You can be heard. I think I will complete the record by having these two witnesses testify and then you can be heard.

You want to take the stand, Mr. Cavalier.

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### Certificate of Service

une 10 , 1978

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.